

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE RIZALINA ABELLAN,
Debtor/Appellant.

No. C 11-0401 PJH
Bankr. Case No. No. 10-34186 DM

DISMISSAL ORDER

On May 13, 2011, the court issued an order to show cause re: why this case should not be dismissed based on appellant's failure to perfect the record in this bankruptcy appeal filed nearly five months ago. In that order, the court advised appellant that if he

wishe[d] to proceed with this appeal, he is ORDERED to file **with the bankruptcy court** his designation of the items to be included with the record on appeal and the statement of issues on appeal as required by FRBP 8006 **no later than Friday, May 27, 2011**. Given that both items are currently three months overdue, Abellan is advised that if he fails to timely file the documents **with the bankruptcy court** in accordance with this order, the court will dismiss this bankruptcy appeal for failure to prosecute pursuant to FRBP 8001.

Review of this court's docket and that of the bankruptcy court reveals that appellant failed to file the designation of record and statement of issues in accordance with this court's order. Nor has appellant filed any comprehensible explanation regarding his failure to comply with the May 13, 2011 order.

The court notes that throughout this appeal, appellant has filed a number of incomprehensible documents suggesting that he is unaware of the nature of this

1 proceeding. In fact, in its April 8, 2011 order following appellant's filing of documents
2 entirely irrelevant and unrelated to the appeal, including one that purported to be a motion,
3 the court

4 advised [appellant] that the ONLY issue before this court in this bankruptcy appeal is
5 **whether the bankruptcy court abused its discretion when it dismissed**
6 **Abellan's Chapter 13 case for failure to comply with his filing requirements.**
7 There is NO civil complaint pending before this court - only the appeal, which does
8 NOT concern the real property at issue. To the extent that Abellan seeks relief
9 regarding the state court order, that relief is appropriately sought in the state court
10 case. Abellan is NOT permitted to file an improper appeal of state court orders in
11 the context of this bankruptcy appeal.

12 On May 25, 2011, and June 1, 2011, appellant again filed with this court (and not with the
13 bankruptcy court) incomprehensible documents that are neither a designation of the record
14 nor a statement of the issues, nor do they explain why appellant has failed to file either
15 document as required by the Federal Rules of Bankruptcy Procedure and this court's prior
16 order.

17 Accordingly, given appellant's failure to perfect the appeal and comply with the
18 court's order, the court DISMISSES the appeal for failure to prosecute pursuant to Federal
19 Rule of Bankruptcy Procedure 8001 and Federal Rule of Civil Procedure 41(b). See
20 *Malone v. United States Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987).

21 **IT IS SO ORDERED.**

22 Dated: June 10, 2011



23 PHYLLIS J. HAMILTON
24 United States District Judge

25 cc: Clerk of the Bankruptcy Court, San Francisco Div.
26 Honorable Dennis Montali
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